

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	CRIMINAL ACTION NO.
v.)	2:08cr58-MHT
)	(WO)
TAWAINE McCULLOUGH,)	
)	

ORDER

At defendant Tawaine McCullough's sentencing hearing held on November 25, 2008, the parties and the probation department informed the court that they were not prepared to resolve McCullough's first objection to the pre-sentence report.

McCullough's objection concerns whether his two previous Alabama Youthful Offender adjudications should increase his criminal history score by two points each under U.S.S.G. § 4A1.2(d). The parties acknowledge that McCullough's probation was revoked within five years prior to the commencement of the offense for which he now appears. However, of particular concern to the

government, probation, and McCullough is the factual question of whether this revocation was pursuant to the youthful-offender cases or whether it was pursuant to an adult-robbery charge for which McCullough had also been incarcerated concurrently or whether it was pursuant to the youthful-offender cases as well as the robbery charge. McCullough argues that he had already completed his sentence on the youthful-offender cases while he remained incarcerated pursuant to the lengthier robbery conviction and that, therefore, any subsequent probation could only have been pursuant to the robbery charge.

These factual and timing issues become important, the parties argue, in determining whether the youthful offender adjudications are sufficiently temporally proximate to count under the five-year restriction imposed by § 4A1.2(d)(2)(A).

Therefore, it is ORDERED that:

(1) Sentencing for defendant Tawaine McCullough is continued to January 26, 2009, at 10:00 a.m. in the Frank

M. Johnson, Jr. United States Courthouse Complex,
Courtroom 2FMJ, One Church Street, Montgomery, Alabama.

(2) By January 20, 2009, the parties are to file
briefs explaining how these factual issues have been
resolved and arguing or agreeing to any legal conclusions
that follow from the clarification of this factual
uncertainty.

DONE, this the 26th day of November, 2008.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE